

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CATHY ENWERE,

No. C-11-3834 EMC

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S
MOTION FOR RELIEF AND PETITION
FOR AMENDED ORDER**SAUER & WAGNER LAW FIRM, *et al.*,

Defendants.

(Docket Nos. 15, 16)

Previously, this Court granted Plaintiff leave to proceed *in forma pauperis* but dismissed her complaint because, based on the allegations therein, Defendants' conduct was protected by the litigation privilege. The Court, however, gave Plaintiff an opportunity to file an amended complaint. *See* Docket No. 10 (order). Thereafter, Plaintiff filed a paper which the Court construed as a motion to reconsider. The Court denied the motion but reminded Plaintiff that she had an opportunity to file an amended complaint. *See* Docket No. 12 (order). Plaintiff thereafter filed an amended complaint. *See* Docket No. 13 (amended complaint). Because the amended complaint failed to address the deficiencies identified by the Court, it dismissed the suit with prejudice. *See* Docket No. 14 (order). Plaintiff has now filed two motions with this Court. *See* Docket Nos. 15, 16 (motions).

However the Court construes these motions – *e.g.*, as motions to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59 or as motions for relief from the judgment under Rule 60 – the Court concludes that they fail to present any meritorious argument justifying relief. However Plaintiff frames her claims, *e.g.*, defamation, fraud, perjury, misrepresentation, the fact


1 remains that Defendants allegedly made statements to Judge White as a part of a lawsuit, and
2 therefore the litigation privilege is applicable. To the extent Plaintiff argues that Defendants'
3 statements are hearsay, that is beside the point. The Court is not entertaining any evidence at this
4 juncture; it is simply considering what Plaintiff has alleged. Moreover, to the extent Plaintiff would
5 need to rely on the statements to prove her case, the statements would not be hearsay because they
6 would constitute admissions of a party-opponent. *See* Fed. R. Evid. 801(d)(2). Finally, while the
7 Court understands Plaintiff's frustration that it is evaluating her complaint without Defendants even
8 making any argument, it is required to do such because Plaintiff asked for leave to proceed *in forma*
9 *pauperis*. As the Court noted in its order of August 30, 2011, "a court must dismiss any case in
10 which a litigant seeks leave to proceed in forma pauperis if the court determines that the action is (1)
11 frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks
12 monetary relief against a defendant who is immune from such relief." Docket No. 10 (Order at 2)
13 (citing 28 U.S.C. § 1915(e)(2)). This duty is imposed upon the Court under § 1915(e)(2) even in the
14 absence of a motion by defendant; it is triggered when the plaintiff seeks to proceed *in forma*
15 *pauperis*. As the Court held, Defendants are immune from relief pursuant to the litigation privilege.

16 Accordingly, Plaintiff's motions are hereby **DENIED**.

17 This order disposes of Docket Nos. 15 and 16.

18
19 IT IS SO ORDERED.

20
21 Dated: October 17, 2011

22 
23 EDWARD M. CHEN
24 United States District Judge
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CATHY ENWERE,

No. C-11-3834 EMC

Plaintiff,

v.

CERTIFICATE OF SERVICE

SAUER & WAGNER LAW FIRM, *et al.*,

Defendants.

_____ /

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

Cathy Enwere
1263 Madera Avenue
Menlo Park, CA 94025

Dated: October 17, 2011

RICHARD W. WIEKING, CLERK

By: /s/ Leni Doyle
Leni Doyle
Deputy Clerk